using a statistically valid sample of retail and wholesale queries drawn on a monthly basis as opposed to measuring each update to the databases individually. The Commission agrees that the databases to which these measures apply are parity by design and the process for updating the databases is the same for both retail and wholesale orders. Therefore, the Commission orders that BellSouth shall collect data for database interval and accuracy using a statistically valid sample of retail and wholesale queries.

Finally, as part of it's first request, BellSouth states that the Commission Order requiring BellSouth to disaggregate PO-1 (Average Response Time for Loop Make Up ("LMU")-Non Mechanized) and PO-2 (Average Response Time for LMU-Electronic) on a product-specific basis into ADSL, HDSL, Other DSL, and Line Sharing is unnecessary. From a measurement perspective, the only relevant inquiry is whether BellSouth provides LMU information in a timely manner. The Commission orders that the disaggregation levels for PO-1 and PO-2 be amended as requested by BellSouth because LMU does not distinguish between loop types.

BellSouth requested the Commission clarify that the Order's reporting and enforcement provisions take effect March 1, 2001, and asked for additional time until June 30, 2001, for implementation of certain measures ordered by this Commission. The Commission ordered the measures effective 45 days after issuance of the Commission Order of January 16, 2001. To coincide with the first day of the month, the Commission orders that all reporting and enforcement requirements shall take effect on March 1, 2001. The Commission is aware that it takes an enormous programming effort to implement the new measures and additional disaggregation in its Order. Therefore, the Commission grants an extension until May 1, 2001, for BellSouth to provide CLEC-specific data for SQM reporting purposes, to provide CLEC-specific data for purposes of the Enforcement Plan and to provide product specific data for purposes of the Enforcement Plan for the measures identified in BellSouth's motion. This extension does not relieve BellSouth of the obligation to pay Tier 1 penalties. BellSouth shall implement the interim methodology in accordance with the proposal included in its motion.

Third, BellSouth sought reconsideration on the appropriateness of including OSS-1 (Percent Response Received in X Seconds), CM-1 (Timeliness of Change Management Notices) and CM-3 (Timeliness of Documents Associated with Change) in Tier 1 of the Enforcement Plan and the appropriateness of Tier 3 penalties in light of substantial penalties adopted in Tier 1 and 2. The Commission concludes that OSS-1, CM-1 and CM-3 are industry wide rather that CLEC-specific and should be excluded from Tier 1 of the Enforcement Plan. The Commission denies BellSouth's request to exclude Tier 3 penalties from the Enforcement Plan.

Last, BellSouth requested the Commission reconsider the amount of penalties for late and incomplete Performance Reports, to modify the Commission's Force Majeure provision to include situations in which CLECs attempt to "game" the Enforcement Plan and to reconsider its Order and adopt 1.0 as the delta value for individual CLEC calculations and .50 for aggregated calculations. In response to penalties for late and

incomplete reports, the Commission orders penalties, in the aggregate, be paid to the state on a progressive scale as follows:

1-7 days	$5,000
8-15 days	$10,000
16-30 days	$40,000
31 + days	$5,000 per day

The Commission denies BellSouth's recommendation to modify the Commission's Force Majeure provision and the Delta Values.

WHEREFORE IT IS ORDERED, that, except as set forth in this order, BellSouth's and the CLEC Coalition's Motion for Clarification and Reconsideration is otherwise denied. All findings, conclusions, and decisions set forth above are hereby made findings of fact, conclusions of law, and orders of the Commission.

ORDERED FURTHER, that all findings, conclusions and decisions contained within the Commission's January 16, 2001, order remain in full force and effect except as otherwise expressly ordered herein.

ORDERED FURTHER, that a motion for reconsideration, rehearing, or oral argument or any other motion shall not stay the effective date of the order unless otherwise ordered by this Commission.

ORDERED FURTHER, that jurisdiction over these matters is expressly retained for the purpose of entering such further orders or orders as this Commission may deem just and proper.

The above action of the Commission in Administrative Session on the 6th day of March 2001.

Reece McAlister
Executive Secretary

5-7-01
Date

Lauren McDonald, Jr.
Chairman

05-07-01
Date

APPENDIX D

APPENDIX D

Docket Number 8354-U, Third Party Test Order(s) (May 20, 1999 and April 27, 2000)

Georgia Public Service Commission

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MAY 2 6 1999

Docket No. 8354-U

ORDER ON PETITION FOR THIRD PARTY TESTING

In re: Investigation into Development of Electronic Interfaces for BellSouth's Operational Support Systems

The Georgia Public Service Commission ("Commission") issues this Order to establish a third party testing program of the operational support systems ("OSS") of BellSouth Telecommunications, Inc. ("BellSouth"). The Commission established this case to discuss and propose any necessary enhancements to BellSouth's operations support systems which will aid entry by competitive local exchange companies ("CLECs") into the local market, and to ensure that the systems meet the spirit and the intent of the Telecommunications Act of 1996. On June 4, 1998, the Commission issued its Order Adopting OSS Report. The Commission specifically left open this docket to continue to monitor the development of BellSouth's OSS.

On December 22, 1998, a coalition of Competitive Local Exchange Carriers (CLECs) filed a Petition for Establishment of a Third Party Testing Program of Operational Support Systems (the Petition). In the Petition, the CLECs outlined a proposal for third party testing. On January 21, 1999, BellSouth responded to the Petition and objected to any third party testing of its systems. BellSouth contended that the Commission's efforts in Docket No. 8354-U provided sufficient data to assess BellSouth's systems. After reviewing the CLECs' Petition and BellSouth's response, the Commission hereby grants the Petition in part and denied it in part.

A. Discussion

The Commission agrees that testing of BellSouth's OSS by an outside party is a worthwhile endeavor. The Commission's authority to implement an audit stems from its general jurisdiction to examine the affairs of telecommunications companies, its authority to implement the Telecommunications and Competition Development Act of 1995 (the Georgia Act), and its authority to review BellSouth's compliance with Section 271 of the Telecommunications Act of 1996 (the Federal Act). The Commission notes that under Section 271 BellSouth has the burden of demonstrating compliance with the 14-point checklist.

The Commission has been deeply involved in overseeing the development of BellSouth's OSS for three years, and feels that it has the expertise and knowledge to conduct a focused, supervised audit of BellSouth's OSS. The Commission has previously reviewed substantial documentation regarding the development and operation of BellSouth's OSS. The Commission has solicited comments from CLECs regarding issues associated with the implementation of BellSouth's OSS, has conducted a workshop which considered approximately 100 issues raised by the CLECs, and has issued specific directions to BellSouth regarding the enhancements necessary to bring its OSS into compliance with the requirements of the Federal and State acts. The Commission has monitored the progress toward the completion of these enhancements in this docket through the submission of monthly reports for the last year from BellSouth and the industry. In addition, through the adoption of performance measurements in Docket 7892-U and the monthly reports that have been filed by BellSouth over the last year, the Commission has reviewed a substantial amount of data regarding the performance of BellSouth's OSS, as well as the overall performance of BellSouth in the pre-ordering, ordering, provisioning, maintenance, repair, and billing of resold services and unbundled network elements. Finally, over the last three years, the Commission has held numerous hearing relating to the development and operation of BellSouth's OSS.

Because of the substantial involvement of the Commission in the development and operation of BellSouth's OSS noted above, the Commission does not believe that a full third party audit of all interfaces and services is necessary at this time. The Commission does believe, however, that a focused audit on those areas where BellSouth has not yet experienced significant commercial usage, and where CLECs have expressed concerns regarding operational readiness, is appropriate. In addition, because of the concerns raised by other parties regarding the flow-through performance data submitted by BellSouth, the Commission will order BellSouth to conduct a full audit of the Percent Flow-Through Service Requests performance measurement data submitted by BellSouth in its monthly performance data filing, utilizing a reputable third party, under the guidance and oversight of the Commission Staff.

Using the suggestion of the Joint Movants and the assessments of BellSouth's OSS already conducted by the Commission in this docket, the Commission sets forth herein a testing plan which has been designed to allow the Commission to conduct a thorough, yet efficient audit of those aspects of the BellSouth's OSS. Because the Commission and its Staff have been deeply involved with the development of BellSouth's system, the Commission believes that a focused audit will provide the additional information necessary for it to render an informed opinion with regard to BellSouth's compliance with its OSS obligations under Section 271 of the 1996 Telecommunications Act.

The audit will be conducted pursuant to the procedures set forth herein, and thus any other procedures delineated by the CLECs in the Motion are hereby denied.

B. General Scope of Audit

BellSouth shall engage two reputable audit firms of sufficient size and resources to perform testing of BellSouth's OSS. The two firms will be characterized herein as Firm A and Firm B. The two firms and the Commission Staff will comprise the audit team. The general responsibilities of each firm, and the Commission Staff, are as follows:

1. Firm A:

- The first audit firm ("Firm A") will conduct the actual tests of BellSouth's OSS;
- Firm A will conduct feature, function and volume tests using BellSouth's interfaces consistent with the requirements discussed below.
- Firm A will report the results of those tests assessing the functionality and operational readiness of BellSouth's OSS.

2. Firm B

- The second audit firm ("Firm B") will independently monitor the tests conducted by Firm A and provide assistance and reports to the Commission and its Staff in order to assist the audit of the tests;
- Firm B will evaluate the transactional and operational testing conducted through Firm A's test facility and BellSouth's OSS to determine whether the results reported through the test process match the raw data and the reports generated by BellSouth's OSS reporting systems. Firm B will also conduct the audit of BellSouth's Percent Flow-Through Service Request report described below;
- Firm B will prepare and deliver interim reports and a final report to the Commission on a schedule to be determined.

3. Commission Staff

The Commission designates the Commission Staff to work with Firm A and Firm B during the audit process. The Staff will work with the designated firms to conduct the testing to the extent deemed necessary by the Staff. The Staff also will work with the designated firms to prepare the final report to be presented to the Commission for the Commission's use in this docket, and in preparation for the Commission's recommendation in Docket No. 6863-U.

C. Specific Requirements of Testing

1. Area of Testing

The Commission has reviewed the categories of orders placed electronically and believes that the audit should be focused on the following categories and orders: (1) UNE analog loops, both with and without number probability (INP, LNP); (2) UNE Switch Ports; and (3) UNE Business and Residence Loop/Port combinations. In addition, the Commission will require a

full audit (for the latest 3 months data) of the underlying BellSouth's Percent Flow-Through Service Request report submitted in its monthly filing in Docket 7892-U in order to ensure that the results reflected therein are correct. This audit will also include a review of BellSouth's error analyses.

2. OSS Functions to be Tested

The test will cover the five OSS functions of pre-ordering, ordering, provisioning, maintenance and repair, and billing functions supported by an incumbent LEC's databases and information.

3. Interfaces to be Tested

The interfaces to be tested are Telecommunications Access Gateway ("TAG") pre-ordering, TAG ordering and EDI ordering, ECTA, TAFI, ODUF, EODUF, ADUF, CRIS and CABS billing.

4. Volume Testing

The systems will be tested at both normal and peak volumes to evaluate BellSouth's ability to process representative future wholesale transaction volumes to support CLEC's entry into the market. Volume data will be developed from actual transaction data, CLEC forecasts, and case studies of market share changes in related markets. Volume data will be developed by service and order type for: Resold Services, Unbundled Network Elements (including combinations of elements), Pre-Ordering transactions, and Trouble reports. All types of services and orders, with and without errors, will be included in the volume testing, as appropriate for the interface being tested.

5. Actual Test Plan

Within 10 days of the date of this Order, BellSouth shall file a detailed test plan that accomplishes the directives contained herein. The test plan shall also include an estimated time frame for accomplishing it. The Commission shall review and, if appropriate, modify this plan to ensure compliance with its order. BellSouth shall bear the costs associated with implementation of the test plan.

D. Conclusions

The audit firms will submit interim reports to the Commission and to BellSouth documenting the results of the audits.

At the conclusion of the audit, the firms, in conjunction with the Staff, will issue a final report to the Commission and to BellSouth documenting the results of the audit and any final conclusions.

When the final report is presented to the Commission, any interested CLEC will have the opportunity to comment on the results set forth in the final report.

The Commission will use the final report issued, in conjunction with information already collected in Docket No. 8354-U and Docket No. 7892-U, in arriving at its final recommendation to the FCC on the operational readiness of BellSouth's OSS.

WHEREFORE IT IS ORDERED, that the CLEC Petition for Establishment of a Third Party Testing Program of Operational Support Systems is hereby granted in part and denied in part as set forth in the body of this Order.

ORDERED FURTHER, that within 10 days of the date of this Order, BellSouth shall file a detailed test plan of its OSS for Commission review. BellSouth is further ordered to file, initiate, and complete the testing plan in compliance with the terms, conditions, and scope set forth in the body of this Order.

ORDERED FURTHER, that all findings, conclusions, and statements set forth in the preceding sections of this Order are adopted as findings of fact, conclusions of law, and statements of regulatory policy of this Commission.

ORDERED FURTHER, that a motion for reconsideration, rehearing, or oral argument or any other motion shall not stay the effective date of this Order, unless otherwise ordered by the Commission.

ORDERED FURTHER, that jurisdiction over these matters is expressly retained for the purpose of entering such further Order or Orders as this Commission may deem just and proper.

The above by action of the Commission in Administrative Session on May 18, 1999.

Helen O'Leary
Executive Secretary

May 20, 1999
Date

Stan Wise
Chairman

5-20-99
Date

Georgia Public Service Commission

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Docket No. 8354-U

In re: Investigation Into Development of Electronic Interfaces for BellSouth's Operations Support Systems

ORDER ON BELLSOUTH'S MOTION FOR A PROTECTIVE ORDER AND KPMG'S MOTION FOR A PROTECTIVE ORDER

On April 10, 2001, BellSouth Telecommunications, Inc. ("BellSouth") filed with the Georgia Public Service Commission ("Commission") a Motion for a Protective Order ("BellSouth Motion"), requesting that the Commission quash the notice served by AT&T Communications of the Southern States, Inc. ("AT&T") seeking to depose three of BellSouth's employees. BellSouth argues that AT&T's notice is improper because AT&T is not authorized to depose BellSouth employees in this docket. (BellSouth Motion, p. 1). BellSouth also argues that "deposing BellSouth employees would not lead to the discovery of admissible evidence relevant to the issues at hand." *Id.*

BellSouth will not be sponsoring witnesses at the May 8, 2001, hearing scheduled in this docket. The purpose of the hearing is to examine the Final Reports submitted to the Commission by KPMG Consulting, LLC ("KPMG") on March 20, 2001. The Commission finds that it is not appropriate at this time for depositions of BellSouth's witnesses to be taken. Accordingly, the Commission quashes the deposition notices served by AT&T upon BellSouth. However, the Commission directs BellSouth respond immediately to the interrogatories served upon it.

On April 16, 2001, KPMG filed with the Commission a Motion for a Protective Order from AT&T's Discovery Requests ("KPMG's Motion"). The Commission finds that it is appropriate for AT&T to request discovery from KPMG. Therefore, the Commission denies KPMG's Motion, and directs KPMG to comply with the AT&T's discovery requests.

******

WHEREFORE IT IS ORDERED, that the notice served by AT&T seeking to depose three BellSouth employees is quashed.

ORDERED FURTHER, that BellSouth shall respond immediately to interrogatories served upon it.

ORDERED FURTHER, that KPMG's Motion is hereby denied.

ORDERED FURTHER, that a motion for reconsideration, rehearing or oral argument or any other motion shall not stay the effective date of this Order, unless otherwise ordered by the Commission.

ORDERED FURTHER, that jurisdiction over this matter is expressly retained for the purpose of entering such further Order or Orders as this Commission may deem just and proper.

The above by action of the Commission in Administrative Session on the 17th day of April, 2001.

Reece McAlister
Executive Secretary

4-26-01
Date

Lauren McDonald, Jr.
Chairman

04/26/01
Date

APPENDIX E

APPENDIX E

Docket Number 10692-U, Generic Proceeding To Establish Long-Term Pricing Policies for Unbundled Network Elements Order

Georgia Public Service Commission

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DOCKET NO. 10692-U

ORDER

In re: Generic Proceeding to Establish Long-Term Pricing Policies For Unbundled Network Elements

BY THE COMMISSION:

The Georgia Public Service Commission ("Commission") initiated this docket to establish long-term pricing policies for combinations of Unbundled Network Elements (UNEs) and to establish recurring and nonrecurring rates for particular combinations of UNEs.

I. INTRODUCTION

A. Background

On December 4, 1996, the Commission issued its Order on the AT&T Petition for Arbitration. In that Order, the Commission set interim rates for unbundled network elements (UNEs). The Commission stated in the AT&T Arbitration Order: "The Commission further rules that it shall conduct a generic proceeding to develop appropriate long-term pricing policies regarding recombination of unbundled capabilities." Docket 6801-U, AT&T Arbitration Order, p. 52.

On December 6, 1996, the Commission issued a Procedural and Scheduling Order to consider cost-based rates in Docket 7061-U, In Re: Review of Cost Studies, Methodologies, and Cost-Based Rates for Interconnection and Unbundling of BellSouth Telecommunications Services. The Commission issued its final order in that case on December 16, 1997 setting permanent rates for stand-alone UNEs. In its order, the Commission stated: "The Commission reaffirms its corollary decision in Docket 6801-U that it shall conduct a generic proceeding to develop long-term pricing policies regarding recombination of UNEs. . . . Indeed, the Commission notes that this proceeding is not, and was not intended to be the 'Generic Proceeding' to develop appropriate long-term pricing

policies regarding recombination of unbundled capabilities that was envisioned in the Commission's December 4, 1996 order ruling on Arbitration in docket 6801-U." Docket 7061-U, UNE Cost Order, pp. 48-49.

Various parties have continued to show an interest in this issue. For example, on April 10, 1998, AT&T filed a petition with this Commission to commence a generic proceeding to establish long-term pricing policies for UNEs. See Docket 9097-U. On January 23, 1999, MCIMetro Access Transmission Services, LLC, filed a complaint against BellSouth to obtain DS1 Loop - Transport combinations at UNE prices. See Docket 6865-U.

On January 25, 1999, the Supreme Court issued its decision in AT&T Corporation v. Iowa Utilities Board, 119 S.Ct. 721 (1999). This matter had come before the Supreme Court on writs of certiorari from the decision of the Eighth Circuit Court of Appeals which had vacated portions of the Federal Communications Commission's First Report and Order issued on August 8, 1996. Among other provisions, the Eighth Circuit had vacated FCC Rule 315(b) which prohibited ILECs from separating elements which are already combined. The Supreme Court reversed the Eighth Circuit on this issue, reinstating Rule 315(b). The Supreme Court affirmed the ruling of the Eighth Circuit that CLECs can provide local service relying solely on the elements in an incumbent's network. The Supreme Court ruled, however, that the FCC did not adequately consider the "necessary and impair" standard in determining which network elements incumbents must provide to CLECs. As a result, the Supreme Court vacated the FCC's Rule 319.

On September 15, 1999, the Federal Communications Commission (FCC) completed its reconsideration of Rule 319, adopting its Third Report and Order and Fourth Further Notice of Proposed Rulemaking (Third Report and Order), Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98. The FCC's written order was released on November 5, 1999. In this Third Report and Order, the FCC revised, in light of the Supreme Court's order, the list of the network elements that ILEC must provide on an unbundled basis and issued a new Rule 319. The FCC ruled that the following elements must be unbundled: Loops, subloops, network interface device (NID), circuit switching, interoffice transmission facilities, signaling and call-related databases, and operations support systems (OSS). For circuit switching, the FCC ruled that Incumbent LECs must offer unbundled access to local circuit switching, except for switching used to serve business users with four or more lines in FCC access density zone 1 (the densest areas) in the top 50 Metropolitan Statistical Areas (MSAs), provided that the incumbent LEC provides non-discriminatory, cost-based access to the enhanced extended link (EEL, a combination of an unbundled loop, multiplexing/concentrating equipment, and dedicated transport.). The FCC ruled that, pursuant to section 51.315(b) of the FCC's rules, incumbent LECs are required to provide access to combinations of loop, multiplexing/concentrating equipment and dedicated transport if they are currently combined. The FCC did not readdress whether an incumbent LEC must combine network elements that are not already combined in the network, because that issue is pending before the Eighth Circuit Court of Appeals. Finally, the FCC sought comment on the legal and policy bases for precluding requesting carriers from substituting dedicated transport for special access entrance facilities.

On November 24, 1999, the FCC issued a Supplemental Order to its Third Report and Order. In this Supplemental Order, the FCC modified its conclusion in paragraph 486 of the Third Report and Order to allow incumbent LECs to constrain the use of combinations of unbundled loops and transport network elements as a substitute for special access service. Supplemental Order, ¶ 4. IXCs may not convert special access services to combinations of unbundled loops and transport network elements, whether or not the IXCs self-provide entrance facilities, unless the IXC uses the combination "to provide a significant amount of local exchange service, in addition to exchange access service, to a particular customer." Id. at ¶ 5.

B. Statement of Proceeding

On May 18, 1999, the Commission issued its Procedural and Scheduling Order that set forth the scope of the hearing in this matter. The Scheduling Order stated that the purpose of this proceeding was to establish long-term pricing policies for combinations of Unbundled Network Elements (UNEs). The Scheduling Order stated that the Commission would set recurring and non-recurring rates for certain combinations of UNEs. In addition, it stated that the Commission would set pricing policies for combinations of UNEs generally. Finally, the Scheduling Order stated that the Commission would consider, and parties testimony should address, the following issues:

1. How should the recurring and nonrecurring charges for UNEs combinations be determined?

2. What are the appropriate recurring and nonrecurring charges for the following combinations:

    i. DS1 Loop - Transport combination
    ii. 2-wire analog loop-port combination

3. What other UNE combinations have CLECs requested from BellSouth and what are the appropriate recurring and nonrecurring charges for these combinations?

The Scheduling Order provided that any party submitting a cost study was required to provide comprehensive and complete work papers that fully disclosed and documented the process underlying the development of each of its economic costs, including the documentation of all judgments and methods used to establish every specific assumption employed in each cost study. The Scheduling Order required that the work papers clearly and logically represent all data used in developing each cost estimate, and be so comprehensive as to allow others initially unfamiliar with the studies to replicate the methodology and calculate equivalent or alternative results using equivalent or alternative assumptions. The Scheduling Order required that the work papers be organized in such a manner as to clearly identify and document all source data and assumptions, including investment, expense, and demand data assumptions.

BellSouth and AT&T filed cost studies in this proceeding. BellSouth presented recurring and non-recurring cost studies which used basically the same methodology adopted by the Commission in its December 16, 1997 Order in Docket 7061-U. Most, but not all, of the adjustments that were ordered by the Commission in Docket 7061-U were incorporated into the new studies. AT&T presented the HAI Model 5.1 (HAI or Hatfield) for a limited number of the recurring costs and the AT&T and MCI Non-Recurring Cost Model for a limited number of the non-recurring costs. For those costs, not covered by its models, AT&T recommended that use BellSouth's cost studies with modifications.

In hearings commencing July 13, 1999, the Commission heard testimony from witnesses for AT&T Communications of the Southern States (AT&T), Inc., BellSouth Telecommunications, Inc. (BellSouth), the Competitive Telecommunications Association (Comptel), the United States Department of Defense and All Other Federal Executive Agencies (collectively referred to as DOD), Excel Telecommunications, Inc. (Excel), Intermedia Communications, Inc. (Intermedia), MCI WorldCom, Inc. (MCI WorldCom), Sprint Communications Company, L.P. (Sprint), and Qwest Communications (Qwest). After the conclusion of the hearings, the Commission received closing briefs from interested parties. In addition to receiving briefs from most of the parties sponsoring witnesses, the Commission received briefs from the Consumers' Utility Counsel Division (CUCD), ICG Telecom Group, Inc. (ICG), and NEXTLINK Georgia, Inc. (NEXTLINK).

As discussed above, on November 5, 1999, the FCC issued its Third Report and Order. On December 7, 1999, the Commission issued its Order Setting Briefing Schedule which allowed any interested parties to file briefs addressing the impact of the FCC's Third Report and Order on the issues in this case. The Commission received Briefs from AT&T, BellSouth, Certain Facilities-Based CLECs (Focal Communications Corp. of Georgia, ICG, Intermedia, and NEXTLINK), CUCD, KMC Telecom, Inc. and KMC Telecom II, Inc. (KMC), MCI, and Sprint.

C. Jurisdiction

Under the Federal Telecommunications Act of 1996 (Federal Act), State Commissions are authorized to set rates and pricing policies for interconnection and access to unbundled elements. In addition to its jurisdiction of this matter pursuant to Sections 251 and 252 of the Federal Act, the Commission also has general authority and jurisdiction over the subject matter of this proceeding, conferred upon the Commission by Georgia's Telecommunications and Competition Development Act of 1995 (Georgia Act), O.C.G.A. §§46-5-160 *et seq.*, and generally O.C.G.A. §§ 46-1-1 *et seq.*, 46-2-20, 46-2-21, and 46-2-23.

II. FINDINGS AND CONCLUSIONS

A. UNE Combinations Generally

Before determining the actual rates for any combinations of unbundled network elements, the Commission must address certain underlying issues. In particular, the Commission must determine the scope of BellSouth's obligation to provide combinations of UNEs and the applicable pricing standards that apply to combinations of UNEs.

1. Rule 319 / Necessary and Impair Standard

In January 1999, the Supreme Court ruled that the FCC did not adequately consider the "necessary and impair" standard in determining which network elements incumbent LECs must provide to CLECs. As a result, the Supreme Court vacated the FCC's Rule 319. In the hearings held before this Commission, BellSouth argued that this Commission should consider the necessary and impair standard in making its determination. Since the hearing was held, the FCC has completed its reconsideration of Rule 319 and specified a national list of UNEs that ILECs must provide: Loops, subloops, network interface device (NID), circuit switching[1], interoffice transmission facilities, signaling and call-related databases, and operations support systems (OSS).

For UNEs on the national list, there is no need for this Commission to consider the necessary and impair standard since the FCC already made that determination. Indeed, the FCC stated that the goals of the Act would better be served if network elements are not removed from the national list on a state-by-state basis, at this time. The FCC order did recognize that state commissions are authorized to require incumbent LECs to unbundle additional elements as long as the obligations are consistent with the requirements of section 251. Accordingly, this Commission would apply the necessary and impair standard to the extent it considered a request to expand the unbundling requirements under the Federal Act. Since this Commission is not expanding the national list in this order, there is no need for this Commission to undertake such an analysis. Some CLECs have requested that the Commission define the enhanced extended link (EEL) as a UNE. Joint Supplemental Brief of Certain Facilities-Based CLECs, p. 7. The EEL is a UNE combination consisting of a loop, transport and a cross-connect. Like the FCC, the Commission declines to define the EEL itself as a UNE. Third Report and Order, ¶ 478. However, as discussed below, CLECs can obtain at UNE rates combinations of UNEs that BellSouth ordinarily combines in its network.

[1] For circuit switching, the FCC ruled that Incumbent LECs must offer unbundled access to local circuit switching, except for switching used to serve business users with four or more lines in FCC access density zone 1 in the top 50 Metropolitan Statistical Areas (MSAs), provided that the incumbent LEC provides non-discriminatory, cost-based access to the enhanced extended link.

2. Applicability of FCC Rules to Pricing UNE Combinations

In its First Report and Order, the FCC had required that prices for unbundled network elements be developed using the TELRIC methodology. The Eighth Circuit had vacated the FCC's pricing rules on the grounds that pricing was outside of the FCC's jurisdiction and was reserved for the states. The Supreme Court overturned the Eighth Circuit on this issue, ruling that the FCC had jurisdiction to design a pricing methodology that the States must use. Since it had determined that the FCC lacked the jurisdiction to require a particular pricing methodology, the Eighth Circuit never reached the issue of whether TELRIC complies with the Act. The Supreme Court remanded this issue back to the Eighth Circuit. The FCC's pricing rules have been reinstated by the Supreme Court and are currently in effect pending the Eighth Circuit's review of TELRIC.[2]

BellSouth had argued in this proceeding that while "the FCC was very specific to establish pricing rules for the provision of individual UNEs. The FCC did not establish pricing rules to govern the provision of currently combined UNEs." (Pre-filed Direct Testimony of Varner, p. 24). The Commission disagrees.

The FCC's pricing rules provide:

Rule 51.501 Scope.

(a) The rules in this subpart apply to the pricing of network elements, interconnection, and methods of obtaining access to unbundled network elements, including physical collocation and virtual collocation.
(b) As used in this subpart, the term "element" includes network elements, interconnection, and methods of obtaining access to unbundled elements.

Rule 51.503 General Pricing Standard.

(a) An incumbent LEC shall offer elements to requesting carriers at rates terms and conditions that are just, reasonable and nondiscriminatory.
(b) An incumbent LEC's rates for each element it offers . . . shall be established, at the election of the state commission-
    (1) pursuant to the forward-looking economic cost-based pricing methodology set forth in §§51.505 and 51.511 of this part; or
    (2) consistent with the proxy ceilings and ranges set forth in §51.513 of this part.
(c) The rates that an incumbent LEC assesses for elements shall not vary

2 As discussed below, the portion of the pricing rules which requires geographic deaveraging has been stayed by the FCC.

> on the basis of the class of customers served by the requesting carrier, or on the type of service that the requesting carrier purchasing such elements uses them to provide.

The rules clearly apply to the pricing of all network elements. Nowhere in the rules does the FCC imply that they apply only to network elements that are physically separated from other network elements. The rules do refer to "unbundled" elements; however, the Supreme Court specifically rejected BellSouth's argument that the term unbundled means physically separated:

> Nor are we persuaded by the incumbents' insistence that the phrase "on an unbundled basis" in §251(c)(3) means "physically separated." The dictionary definition of "unbundled" (and the only definition given, we might add) matches the FCC's interpretation of the word: "to give separate prices for equipment and supporting services." Webster's Ninth New Collegiate Dictionary 1283 (1985).

Iowa Board, (Emphasis added).

In its Third Report and Order, the FCC made it clear that it considered its pricing rules for UNEs to be applicable to combinations of UNEs. Third Report and Order ¶¶ 480 and 486. Based on the FCC's statements in its Third Report and Order, BellSouth has stated that "[w]hile the merits of the FCC's pricing rules are currently on appeal, BellSouth will provide currently combined network elements at cost-based rates in accordance with the FCC's TELRIC pricing rules." BellSouth's Brief on the Impact of the FCC's Third Report and Order, p. 8.

The Commission finds that the FCC pricing rules do apply to combinations of network elements.

3. Reasonable Profit

The cost model that BellSouth presented in this proceeding includes the return on equity which this Commission adopted in Docket 7061-U. Thus, the costs that the model generates includes as profit a reasonable return on BellSouth's investment. In addition to the costs plus profit generated by its cost model, however, BellSouth has argued that its rates should include an additional sum, which it refers to as a "reasonable profit." BellSouth argues that the "reasonable profit" for a 2-wire analog loop-port combination should be an additional recurring charge of $9.19. For a 4-wire DS1 loop-transport combination, BellSouth argues that it should be an additional $78.25. While BellSouth's cost models generate costs for other combinations, it has not recommended a rate or an amount of "reasonable profit" for them.

In Docket 7061-U, the Commission addressed the issue of the meaning of the term "reasonable profit" as it is used in 47 U.S.C. § 252(d)(1)(B). The Commission stated:

> The Commission does not accept BellSouth's assertion that the "reasonable profit" referred to in 47 U.S.C. § 252(d)(1)(B) means a profit over and above the cost including cost of capital. . . . [T]he Commission notes that BellSouth's interpretation would run counter to established pricing principles that the reasonable profit is incorporated within the concept of cost of capital.

Order in Docket 7061-U, p. 24. The Commission hereby reaffirms its finding in Docket 7061-U.

BellSouth argued that the best way to provide for a reasonable profit is to set the price of currently combined UNEs at the resale rate. BST's Brief, p. 24. While this Commission previously ruled that UNE combinations that replicate a retail service should be priced as resale, in light of the court decisions rejecting BellSouth's arguments that UNE combinations are, or should be treated as, resale, this position is no longer tenable. The Eighth Circuit rejected the ILEC argument that when a CLEC uses only leased network elements to provide a service that the wholesale rate should apply. Instead, the Eighth Circuit affirmed the FCC's "all elements" rule, ruling that even when a CLEC used only leased elements to provide service, the elements would be priced at the cost-based rates, not the wholesale rate. 120 F.3d at 814. The Supreme Court affirmed the Eighth Circuit's holding on the "all elements" rule. The Supreme Court went even further. When it reinstated Rule 315(b), the Court explicitly recognized that this rule would allow CLECs to lease a complete, preassembled network at cost-based rates (assuming the list of elements under Rule 319 was not changed). As the Court stated:

> Rule 315(b) forbids an incumbent to separate already-combined network elements before leasing them to a competitor. As they did in the Court of Appeals, the incumbents object to the effect of this rule when it is combined with others before us today. TELRIC allows an entrant to lease network elements based on forward-looking costs, Rule 319 subjects virtually all network elements to the unbundling requirement, and the all-elements rule allows requesting carriers to rely only on the incumbent's network in providing service. When Rule 315(b) is added to these, a competitor can lease a complete, preassembled network at (allegedly very low) cost-based rates.
>
> The incumbents argue that this result is totally inconsistent with the 1996 Act. They say that it not only eviscerates the distinction between resale and unbundled access, but that it also amounts to Government-sanctioned regulatory arbitrage. Currently, state laws require local phone rates to include a "universal service" subsidy. Business customers, for whom the cost of service is relatively low, are charged significantly above cost to subsidize service to rural and residential customers, for whom the cost of service is relatively high. Because this universal-service subsidy is built into retail rates, it is passed on to carriers who enter the market through the resale provision.

> Carriers who purchase network elements at cost, however, avoid the subsidy altogether and can lure business customers away from incumbents by offering rates closer to cost. This, of course, would leave the incumbents holding the bag for universal service.
>
> As was the case for the all-elements rule, our remand of Rule 319 may render the incumbents' concern on this score academic. Moreover, §254 requires that universal-service subsidies be phased out, so whatever possibility of arbitrage remains will be only temporary. In any event, we cannot say that Rule 315(b) unreasonably interprets the statute.

Iowa Board, (Emphasis added).

While BellSouth proposed several other alternative theories which it claimed could be used to calculate its proposed "reasonable profit" of $9.19, no such calculation appears in the record. BellSouth merely makes a conclusory statement as to what its reasonable profit should be without any showing of how it arrived at the number. In addition, as discussed in the prior section, the FCC's UNE pricing rules apply to UNE combinations. BellSouth's "reasonable profit" proposals are contrary to FCC rules that prohibit the consideration of certain factors when setting rates:

> § 51.505(d) Factors that may not be considered. The following factors shall not be considered in a calculation of the forward-looking economic cost of an element:
> (1) Embedded costs. Embedded costs are the costs that the incumbent LEC incurred in the past and that are recorded in the incumbent LEC's book of accounts.
> (2) Retail costs. Retail costs include the costs of marketing, billing, collection, and other costs associated with offering retail telecommunications services to subscribers who are not telecommunications carriers, described in § 51.609 of this part.
> (3) Opportunity costs. Opportunity costs include revenues that the incumbent LEC would have received for the sale of telecommunications services, in the absence of competition from telecommunications carrier that purchase elements.
> (4) Revenues to subsidize other services. Revenues to subsidize other services include revenues associated with elements or telecommunications service offerings other than the element for which a rate is being established.

Based on the above, the Commission rejects BellSouth's so-called reasonable profit adjustment.

4. Currently Combines

FCC Rule 315 addressed combinations of unbundled network elements. Rule 315(b) provides:

> Except upon request, an incumbent LEC shall not separate requested network elements that the incumbent currently combines.

Emphasis added. BellSouth has interpreted the term "currently combines" as "currently combined." BellSouth defines the term to mean those elements "that are physically in a combined state as of the time the CLEC requests them and which can be converted to UNEs on a 'switch as is' or 'switch with changes' basis. . . . Currently combined elements only include loops, ports, transport or other elements that are currently installed for the existing customer that the CLEC wishes to serve." BellSouth's Posthearing Brief, p. 9. The CLECs have interpreted the term to mean elements that are typically combined in the ILECs network, even if the particular elements being ordered are not actually combined at the time the order is placed.

When the Supreme Court reinstated Rule 315(b), it stated its understanding of the intent of the rule:

> The reality is that §251(c)(3) is ambiguous on whether leased network elements may or must be separated, and the rule the Commission has prescribed is entirely rational, finding its basis in §251(c)(3)'s nondiscrimination requirement. As the Commission explains, it is aimed at preventing incumbent LECs from "disconnect[ing] previously connected elements, over the objection of the requesting carrier, not for any productive reason, but just to impose wasteful reconnection costs on new entrants." Reply Brief for Federal Petitioners 23. It is true that Rule 315(b) could allow entrants access to an entire preassembled network. In the absence of Rule 315(b), however, incumbents could impose wasteful costs on even those carriers who requested less than the whole network. It is well within the bounds of the reasonable for the Commission to opt in favor of ensuring against an anticompetitive practice.

Iowa Board.

It appears clear that the Supreme Court believed that at least one major purpose of Rule 315(b) was to prevent the incumbent from ripping apart elements which were already connected to each other. The Commission agrees that at the very least, Rule 315(b) requires BellSouth to provide combinations of elements that are already physically connected to each other regardless of whether they are currently being used to serve a particular customer. The Supreme Court, however, did not state that it was reinstating Rule 315(b) only to the extent it prohibited incumbents from ripping apart elements currently physically connected to each other. It reinstated Rule 315(b) in its entirety, and it did so based on its interpretation of the nondiscrimination language of Section 251(c)(3). See Third Report and Order, ¶¶ 481 and 482.

Indeed, the Ninth Circuit Court of Appeals has recently ruled that it "necessarily follows from AT&T that requiring [the ILEC] to combine unbundled network elements is not inconsistent with the Act . . . the Act does not say or imply that network elements may only be leased in discrete parts." U.S. West Communications v. MFS Intelenet, Inc, 1999 WL 799082, *7 (9th Cir. Oct. 9, 1999). In response to U.S. West's argument that the Eighth Circuit's invalidation of FCC Rules 315(c)-(f) required the Ninth Circuit to conclude that a state commission's order requiring an ILEC to provide combinations violates the Act, the Ninth Circuit stated:

> The Supreme Court opinion . . . undermined the Eighth Circuit's rationale for invalidating this regulation. Although the Supreme Court did not directly review the Eighth Circuit's invalidation of § 51.315(c)-(f), its interpretation of 47 U.S.C. § 251(c)(3) demonstrates that the Eighth Circuit erred when it concluded that the regulation was inconsistent with the Act. We must follow the Supreme Court's reading of the Act despite the Eighth Circuit's prior invalidation of the nearly identical FCC regulation.

Id.

Rule 315(b), by its own terms, applies to elements that the incumbent "currently combines," not merely elements which are "currently combined." In the FCC's First Report and Order, the FCC stated that the proper reading of "currently combines" is "ordinarily combined within their network, in the manner which they are typically combined." First Report and Order, ¶ 296. In its Third Report and Order, the FCC stated that it was declining to address this argument at this time because the matter is currently pending before the Eighth Circuit. Third Report and Order, ¶ 479.[3] Accordingly, the only FCC interpretation of "currently combines" remains the literal one contained in the First Report and Order. The Commission finds that "currently combines" means ordinarily combined within the BellSouth network, in the manner which they are typically combined.[4] Thus, CLECs can order combinations of typically combined elements, even if the particular elements being ordered are not actually physically connected at the time the order is placed. However, in the event that the Eighth Circuit Court of Appeals determines that ILECs have no legal obligation to combine UNEs under the Federal Act, the Commission will reevaluate its decision on this issue. The Commission further finds that the particular loop/port and loop/transport combinations at issue in this case are

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3 While the FCC declined to address this argument again in its Third Report and Order, significantly the FCC did not disavow the position it took in the First Report and Order. BellSouth argues that "the FCC made clear that 'currently combined' elements are those elements physically combined as of the time the CLEC requests them and which can be converted to UNEs on a 'switch as is' or 'switch with changes basis." BellSouth's Brief on Impact of Third Report and Order, p. 5. The FCC, however, was not stating that Rule 51-315(b) is limited only to currently combined elements. Instead, the FCC was stating that since, at the least, Rule 51-315(b) includes currently combined elements, and since when a CLEC purchases special access the elements are currently combined, that even under the more restrictive "currently combined" interpretation, CLECs would be able to convert special access to loop-transport combinations at UNE rates. Third Report and Order ¶ 480.

4 BellSouth's argument that the cost studies it presented in this matter are based on its definition of "currently combined" is discussed below in Section II.B.4, below.

ordinarily combined in BellSouth's network.

Based on the FCC's Third Report and Order, even if this Commission were to limit the definition of "currently combines" to the more restrictive "currently combined" interpretation, CLECs would still be able to obtain and use the same UNE combinations. The process of obtaining them would be more cumbersome, however, and would serve no purpose except to complicate the ordering process and impede competition. According to the FCC, CLECs can purchase services such as special access and resale even when the network elements supporting the underlying service are not physically connected at the time the service is ordered. At the point when the CLEC begins to receive such service, the underlying network elements are necessarily physically connected. The CLECs can then obtain such currently combined network elements as UNE combinations at UNE prices. Third Report and Order, ¶¶ 480, 486. The Commission finds that even assuming arguendo that "currently combines" means "currently combined," rather than go through the circuitous process of requiring the CLEC to submit two orders (e.g., one for special access followed by another to convert the special access to UNEs) to receive the UNE combination, the process should be streamlined to allows CLECs to place only one order for the UNE combination.

5. BellSouth's Proposed Restrictions

BellSouth had proposed in its testimony in this matter numerous restrictions on the use of UNE combinations. These proposed restrictions included:

- Combinations would be available for only two years, beginning only after BellSouth obtains Section 271 approval;

- Customers must be in service for six months before they may be served through a UNE combination;

- Combinations would only be available in the areas defined by BellSouth rate groups 2 and 5;

- Loop/Transport combinations must terminate on a CLEC circuit-switched, local voice switch;

- Loop/Transport combinations can only be used to provide local voice switched service.

- Loop/Transport combinations cannot be used by the entrant to provide special access service; and,

BellSouth's justification for proposing these restrictions was that they were necessary to create "the appropriate economic incentives." BellSouth's Posthearing Brief, p. 27. BellSouth also